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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Farris, et al.

Group Art Unit: 2662

Serial No.: 09/617,816

Examiner: Pezzlo, John

Filed: July 17, 2000

For: TELEPHONY COMMUNICATION VIA VARIED REDUNDANT
NETWORKS

Attorney Docket No.: 00-VE03.13

REPLY BRIEF

Mall Stop Appeal Brief- Patents
Commissioner for Patents
United States Patent and Trademark Office
Washington D.C. 20231

Dear Sir:

This is a Reply Brief submitted pursuant to 37 C.F.R. § 1.193 in response to the Examiner's Answer mailed September 24, 2004 ("Examiner's Answer"). Appellants' Appeal Brief ("Appeal Brief") was filed on August 13, 2004.

Claims 1-44 are pending. In the Final Office Action dated March 22, 2004, claims 1-8 were rejected under 35 U.S.C. § 102(e) as anticipated by U.S. 6,054,653 ("Farris"). Claims 9, 11, and 13-44 were allowed. Claims 10 and 12 have been objected to as depending on rejected base claims, but indicated to be allowable if rewritten in independent form including all limitations of the base claim and any intervening claims. Claims 1-8 are the subject of this appeal.

This Reply Brief addresses the position, maintained by the Examiner in the Examiner's Answer (page 7), that Farris anticipates the claim limitation of "establishing a second voice communication link between said terminals via a second

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landline packet switched network when said monitored quality of service departs from a predetermined value."

ARGUMENT: FARRIS DOES NOT TEACH OR SUGGEST USE OF "A SECOND LANDLINE PACKET-SWITCHED NETWORK."

As explained herein, the Examiner is not correctly stating or applying the legal requirements for a rejection pursuant to 35 U.S.C. § 102(e).

Claim 1 recites in part "establishing a second voice communication link between said terminals via a second landline packet switched network when said monitored quality of service departs from a predetermined value." The Examiner has argued that Farris anticipates this claim limitation by teaching use of an ISDN line that allegedly "is a separate data network from the POTS (plain old telephone service) and does not utilize the PSTN (public switched telephone network) voice circuit-switching facilities." (Final Office Action, page 3.) In the Appeal Brief (page 3), Appellants argued that the Examiner has misread Farris, which clearly teaches use of the PSTN, a *circuit switched network*, for transmission of ISDN calls. The Examiner has failed to take a contrary position in the Examiner's Answer, stating only that in Farris "[t]he second voice communication link is the ISDN pipeline . . . and the pipeline carries the packets which are diverted from the Internet . . . using the digital switch 106." (Examiner's Answer, page 7.)

As Appellants pointed out in the Appeal Brief (page 5 n.1), the mere sending of "packets" over an ISDN call circuit is not an indication that the ISDN call is *packet switched*. The Examiner's Answer actually supports this position. Specifically, the Examiner stated that "the ISDN is an all-digital network *capable of carrying packet traffic*" and acknowledged that "the ISDN communication link is *setup via the PSTN*." (Examiner's Answer, page 7; emphases added.) Further, the Examiner does not dispute Appellants' explanation that the PSTN is a circuit-switched network, and not a packet-switched network. (Appeal Brief, pages 5-6.) In fact, the PSTN, which undisputedly is what Farris teaches for use with ISDN calls, is capable of transporting digital data (for example, using a typical analog modem), but nonetheless it is a circuit-switched network. The PSTN simply cannot under any definition be characterized as a "packet-switched network", as is required by claim 1.

Accordingly, Farris does not teach or suggest "establishing a second voice communication link between said terminals via a second landline *packet switched*

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network" as is recited in independent claim 1. The Examiner's rejection of claim 1, and also of claims 2-8 depending therefrom, should be reversed.


CONCLUSION

In view of the foregoing arguments, Appellants respectfully submit that claims 1-8 are novel over the cited references. The Examiner's rejection of Claims 1-8 is improper because the prior art of record does not teach or suggest each and every element of the claimed invention. In view of the above analysis, a reversal of the rejections of record is respectfully requested of this Honorable Board.

It is believed that no fee is due with this Reply Brief. However, please charge our Deposit Account No. 07-2347, under Order No. 00-VE03.13A, from which the undersigned is authorized to draw, for any fee due with this Reply Brief.

Dated: November 19, 2004

Respectfully submitted,

By 
Joseph R. Palmieri, Reg. No. 40,760
Attorney for Applicants
VERIZON CORPORATE SERVICES
GROUP INC.
c/o Christian Andersen
600 Hidden Ridge Drive
Mailcode HQE03H14
Irving, TX 75038
Telephone: 972-718-4800
Customer No.: 32127



Intellectual Property Law Group

Verizon Corporate Services Group Inc

600 Hidden Ridge Drive
Irving, Texas 75038
MailCode HQE03H14
Phone: 972718-4800
Fax: 972718-3946
E mail:
christian.andersen@verizon.com

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FORMAL SUBMISSION OF:

1) Reply Brief

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Serial No. 09/617,816
Filing Date: July 17, 2000
First Named Inventor: FARRIS
Atty. No. 00-VE03.13A

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